

TENANCY TRIBUNAL AT Auckland

APPLICANT: Aaron Ballard
Tenant

RESPONDENT: Barfoot & Thompson Limited
Landlord

TENANCY ADDRESS: 24 Allen Johnston Place, Saint Johns, Auckland 1072

ORDER

1. Barfoot & Thompson Limited must pay Aaron Ballard \$4,020.44 immediately, calculated as shown in table below.
2. The landlord must carry out the following work, which must be completed by Friday 22 January 2019.
 - a. The gas hob is to be properly repaired or replaced.
 - b. A kitchen designer with knowledge of the efficiency of range hood fans is to be engaged to provide a report and quote for the work that would be required to upgrade the kitchen extraction fan, including, if necessary, replacing the ducting and cupboard alterations.
 - c. A builder or other person with appropriate qualifications to examine water-tightness issues is to be engaged to provide a full report on the state of the downstairs bathroom, the nature of the leak that has yet to be fixed, and a quote for the repairs.
3. As an alternative to compliance with Order 2, the landlord must pay the tenant \$5000.00 immediately.

| Description | Landlord | Tenant |
|--|----------|-------------------|
| Compensation | | \$4,000.00 |
| Filing fee reimbursement | | \$20.44 |
| Total award | | \$4,020.44 |
| Total payable by Landlord to Tenant | | \$4,020.44 |

Reasons:

1. Both parties attended the hearing. Ms Zhan and Ms Bloom attended for the landlord and Mrs and Mrs Ballard both attended.
2. The tenant claims that the landlord has not responded in a timely or reasonable manner to a series of requests for repairs to, variously, heat pumps, lights, the gas hob, the range hood, and the downstairs bathroom. The tenant wants the problems fixed.
3. Under section 45(1)(a) - (ca) Residential Tenancies Act 1986, the landlord has an obligation to provide and maintain certain standards and to comply with applicable requirements.
4. Where the Tribunal finds the landlord has failed to comply with any of these obligations, it may make an order for the landlord to carry out the work. See section 78(1)(e) Residential Tenancies Act 1986.
5. If the work order is not being made by consent of both parties, the Tribunal must also make a monetary order as an alternative to compliance with the work order. This provision does not apply to any work order, or part of a work order, in relation to smoke alarms, insulation, a failure to comply with a standard of fitness under section 120C Health Act 1956, or a failure to comply with any health or safety legislative requirement. See sections 78(2) and 78(2AA) Residential Tenancies Act 1986.

Has the landlord failed to comply with their obligations?

6. Mr Ballard listed a number of problems with the tenancy that have now been remedied, but which took many months, or years, to be addressed. This is an executive dwelling, rented for \$1,200.00 per week. (I note this is inclusive of a rent rebate to compensate for certain problems with the tenancy.) Mr Ballard has produced copies of email exchanges with the landlord addressing the problems with the property, including the malfunctioning of the heat-pump air conditioners in the house, malfunctioning outdoor lights that posed a risk to the tenants, a leak in the downstairs bathroom that has caused ongoing dampness and mould in the downstairs area, and issues with the whitewear, provided with the property.
7. The Ballards seek \$10,000.00 compensation for the loss of amenity and frustration of having to repeatedly chase up the landlord's to have anything actioned.
8. It is apparent from documents filed by the landlord that there has been some turnover of property managers, and evidence was given at the hearing that the owner is not resident in New Zealand. The landlords indicated that it took some

time for the owner to develop a relationship of trust with each new property manager. This apparently delays the property manager's ability to address tenant concerns.

9. I appreciate that owners can put property managers in a difficult situation, but it is nonetheless the responsibility of the property manager, as the landlord, to ensure the requirements of the Residential Tenancies Act 1986 are satisfied. It appeared, from the landlord's submissions, that there was a feeling that the owner has spent a lot of money on the property, and that it was unfair to the owner that the tenant continued to press for repairs to be addressed. While the Act strives to provide fairness for both parties in a landlord-tenant relationship, it is the landlord/owners legal obligation to maintain the property in a reasonable state of repair. That means that if the tenant, as here, rented a large house with five heat pumps, the landlord is obliged to ensure that all five heat pumps are functioning properly and as intended. The cost to the landlord is not an "unfair burden", but a business cost.
10. Furthermore, it is important that absentee landlords understand that New Zealand law prevails in that regard. Various arrangements have been made over the course of the tenancy, of 4.5 years duration, for rent reductions to compensate for inconvenience or loss of amenity in respect of particular issues, but there are some matters that the tenants wish to have resolved. Bearing in mind the length of time that it has taken for each issue to be addressed, and looking at the whole of the tenancy, I agree the tenants are entitled to some compensation.
11. Taking those rent reductions into account, I award the tenant \$4000.00 for loss of amenity and failure by the landlord to respond in a timely fashion to requests for repairs or other attention.

Work Orders

12. As far as I could ascertain, there are now only three matters outstanding, for which I have made work orders.
13. The first is in respect of the gas hob, which has not been functioning properly for an unacceptable period of time. There is an email, dated 3 March 2016, from a previous property manager at the landlord's company, advising the tenant that a new hob had been ordered. When it arrived, the property manager requested, the tenants should notify him so he could arrange installation.
14. That person is apparently no longer with the company. Neither party present was able to explain what had happened to the new hob, or why it had not been installed. However, more than two and a half years later, the existing hob still does not work properly.

15. At the hearing, the landlord indicated that a new hob was in train, and I expect that it has been replaced by now. However, if that has not happened, Order 1(a) above addresses that issue.

Rangehood

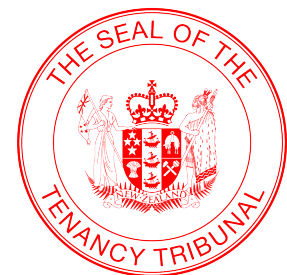
16. The Ballards have made repeated requests for the range hood above the stove top to be replaced. They say the existing range hood is inadequate to clear the cooking fumes from their daily food preparation. That requires them to have windows and doors open to the outside when they cook, to avoid excessive condensation and the resultant problems. Having the windows open in winter is not a reasonable proposition for their children, one of whom is asthmatic.
17. The landlord says they have had people check the range hood, and it has been reported as working. Mr Ballard says that testing the capacity of the range hood with a piece of paper does not address the problem. The fan works, but is inadequate for the daily demands of a family.
18. The landlord has explored the possibility of replacing the range hood but rejected it as the kitchen cupboards were built around the ducting for the range hood.
19. I am not prepared to order the landlord to replace the range hood, as there is a functioning one present, albeit an inadequate one in the tenant's view. However, I think it is reasonable for the landlord to determine whether the range hood fan is objectively adequate for normal use, and to also assess the difficulty and estimated cost of replacing the fan, given the cupboard construction.
20. That report should be provided to both the owner and the Ballards. The Ballards are to understand that ultimately, if the range hood fan is regarded as reasonably adequate, the owner is not obliged to upgrade it. However, if it is, as the Ballards' consider, objectively inadequate, the landlord can be expected to replace it.

Downstairs bathroom

21. The landlord is to employ a qualified plumber or builder, or both, to examine the downstairs bathroom and provide a written report on the source of the leak. Evidence given in the hearing suggests that the owner has had work done on the bathroom already, but that the repairs done have not addressed the leak and resultant mould. Mrs Ballard gave evidence that the dwangs are covered in mould. She was told by the last plumber who attended that it's possible the wall behind the shower does not have waterproof gib or proper waterproof membrane.
22. The report produced is to be provided to the owner and the Ballards. In the absence of further information, I will not order anything further. Either party is free to come back to the Tribunal for further directions.

Alternative to orders

23. However, if the landlord fails to comply with any of the orders, they must pay the Ballard's \$5000.00. This amount reflects the length of time the tenants have had to wait for these long-standing issues to be properly addressed.
24. I note two other things. First, Mrs Ballard requested that the landlord provide information about what time of day any tradesman would arrive. I have full sympathy for the Ballards, but I am also fully aware that qualified tradespeople are in high demand in Auckland. The landlords may not be in a position to impose that requirement on their tradespeople, and even if they make that a condition, they may not have the capacity to ensure the tradesperson co-operates. It would be disappointing if, having waited for so long, the execution of these work orders was disrupted by further disputes over tradesperson access. Both parties should work together, respectfully, to achieve the best possible arrangements.
25. Second, I noted above that the landlord presented the figures representing the amount of money the landlord has spent on the property over the course of the tenancy. It was suggested that it was unfair that the owner should have to continue to spend money.
26. As I have pointed out, being the owner of residential tenancy properties is a business. The money spent so far has been in respect of shortcomings in the property's condition or fittings, including the downstairs bathroom, and it is not the answer to a tenant's legitimate complaints and requests for repairs to say that the landlord has already spent a lot of money. None of the problems is the tenants' fault or responsibility, and they are entitled under the Act to have the house reasonably maintained. Further, I record that the landlord's response at the hearing, saying "if they don't like it, why don't they move out?" is unhelpful and reflects a lack of understanding about the tenancy agreement. It also, at this point in time, fails to take account of the rental market in Auckland.
27. Because Aaron Ballard has substantially succeeded with the claim I have reimbursed the filing fee.



M Poole
07 January 2019

Please read carefully:

SHOULD YOU REQUIRE ANY HELP OR INFORMATION REGARDING THIS MATTER PLEASE CONTACT **TENANCY SERVICES 0800 836 262**.

MEHEMA HE PĀTAI TĀU E PĀ ANA KI TENEI TAKE, PĀTAI ATU KI TE TARI **TENANCY SERVICES 0800 836 262**.

AFAI E TE MANA'OMIA SE FESOASOANI E UIGA I LENEI MATAUPU FA'AMOLEMOLE IA FA'AFESO'OTAI'I LOA LE OFISA O LE **TENANCY SERVICES 0800 836 262**.

Rehearings:

You may make an application to the Tenancy Tribunal for a rehearing. Such an application must be made within five working days of the order and must be lodged at the Court where the dispute was heard.

The **only** ground for a rehearing of an application is that a substantial wrong or miscarriage of justice has or may have occurred or is likely to occur. Being unhappy or dissatisfied with the decision is not a ground for a rehearing. (See 'Right of Appeal' below).

Right of Appeal:

If you are dissatisfied with the decision of the Tenancy Tribunal, you may appeal to the District Court. You only have 10 working days after the date of the decision to lodge a notice of appeal.

However, you may **not** appeal to the District Court:

1. Against an interim order made by the Tribunal.
2. Against an order, or the failure to make an order, for the payment of money where the amount that would be in dispute on appeal is less than \$1,000.
3. Against a work order, or the failure to make a work order, where the value of the work that would be in dispute on appeal is less than \$1,000.

There is a \$200.00 filing fee payable at the time of filing the appeal.

Enforcement:

Where the Tribunal made an order that needs to be enforced then the party seeking enforcement should contact the Collections Office of the District Court on **0800 233 222** or go to www.justice.govt.nz/fines/civil-debt for forms and information.

Notice to a party ordered to pay money or vacate premises, etc:

Failure to comply with any order may result in substantial additional costs for enforcement. It may also involve being ordered to appear in the District Court for an examination of your means or seizure of your property.